

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

TYQUAY CHARLES WILLIAMS,

Petitioner,

v.

**Civil Action No. 1:14cv60
Criminal Action No. 1:12cr96-1
(Judge Keeley)**

UNITED STATES OF AMERICA,

Respondent.

**REPORT AND RECOMMENDATION THAT COURT ENTER AN
AMENDED JUDGMENT AND COMMITMENT ORDER**

I. Introduction

On November 28, 2012, the petitioner, an inmate presently incarcerated at FCI Gilmer in Glenville, West Virginia, signed a plea agreement in the Northern District of West Virginia, in which he agreed to plead guilty to Count One of a six-count indictment, charging him with distribution of cocaine base within 1000 feet of a protected location, in violation of Title 21, U.S.C. §§841(a)(1), 841(b)(1)(C) and 860. Petitioner entered his plea in open court on December 7, 2012. On April 9, 2013, the petitioner was sentenced to a term of 97 months imprisonment, the top of the recommended Guideline range, to be followed by six years supervised release.¹ Petitioner did not file an appeal.

On April 4, 2014, the petitioner filed a Motion Under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, raising two counts of ineffective assistance of counsel, alleging, *inter alia*, that counsel failed to file an appeal on his behalf after being asked to do so, and after promising to do so. (Dkt.# 40). On April 7, 2014, the Government

¹ Subsequently, on February 2, 2015, petitioner filed a Motion to Reduce Sentence (Dkt.# 51). By Order entered February 3, 2015, petitioner's motion was granted and his previously imposed sentence of 97 months was reduced to 78 months. (Dkt.# 52).

was directed to respond (Dkt.# 43). The Government filed its response on May 7, 2014, indicating it had no opposition to the granting of the petition without need for an evidentiary hearing, to permit petitioner to be resentenced, in order to reset the time frame for the timely filing of a notice of appeal. (Dkt.# 48). On June 5, 2014, petitioner replied. (Dkt.# 49).

II. Recommendation

Based on the foregoing, I recommend an Amended Judgment and Commitment Order be Entered, to permit petitioner to timely file a Notice of Appeal, and that the Motion to Vacate, Set Aside or Correct Sentence (Dkt.# 40) be **DENIED as moot**.

Further, the undersigned recommends that petitioner's pending Motion for Pre-Filing Discovery (Dkt.# 38), filed prior to the filing of his §2255 motion, be **DENIED as moot** as well.

Within **fourteen (14) days** after being served with a copy of this report and recommendation, **or by August 26, 2015**, any party may file with the Clerk of Court written objections identifying those portions of the report and recommendation to which objection is made and the basis for such objections. A copy of any objections shall also be submitted to the United States District Judge. **Failure to timely file objections to this report and recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such report and recommendation.** 28 U.S.C. §636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S.1208 (1984).

The Clerk is directed to mail a copy of this Report and Recommendation to the *pro se* petitioner by certified mail, return receipt requested, to his last known address on the docket sheet, and electronically to all counsel of record, as applicable.

DATED: August 12, 2015

James E. Seibert

JAMES E. SEIBERT

UNITED STATES MAGISTRATE JUDGE